THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition (S/B) No. 246 of 2004

Girish Chandra Lohani S/o Late Shiv Dutt Lohani,
Presently serving as Passenger Tax Superintendent in the
Office of Assistant Regional Transport officer, Haridwar.
… **Petitioner.**

Versus

1. State of Uttaranchal through Secretary, Transport Department Government of Uttaranchal, Dehradun.
2. Transport Commissioner, Uttaranchal, 228 Mohit Nagar, Dehradun.
3. Sri Dinesh Chandra Pandey, presently serving as Passenger, Tax Superintendent in the office of Assistant Regional Transport Officer, Haridwar.
4. Transport Commissioner, U.P. Lucknow.

… **Respondents.**

Sri Manoj Tiwari, learned counsel for the petitioner.
Sri K.P. Upadhyay, Learned Standing for the State of Uttaranchal-respondent.
Sri Sharad Sharma, learned counsel for the respondent no.3.
Learned Standing Counsel for State of U.P.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Dated July 06, 2006.

Heard learned counsel for the rival parties and perused the entire material on record.

By means of this writ petition, the petitioner has prayed for mandamus commanding the respondents to promote him on the post of Passenger Tax Officer from the date Sri Dinesh Chandra Pandey- respondent no.3, who is junior to him, has been promoted.

The petitioner was initially appointed on the post of stenographer on 31.8.1977, which Sri Dinesh Chandra Pande was appointed on the said post of Stenographer on 26-9-1977 and the final seniority list of stenographers was published on 26-7-1994, in which the name of the petitioner finds place at serial no. 20 and the name of the respondent no.3, Dinesh Chandra Pande, stands at serial number 21.

The petitioner and the respondent no. 3 both were promoted on the post of Passenger Tax Superintendent vide order dated 9-4-1981 temporarily and lateron, they were confirmed. The petitioner was confirmed on 26-8-1995, while the respondent no. 3 was confirmed on 23-6-1995. Thus, it is evident from the record that the petitioner was confirmed on a prior date and the respondent was confirmed subsequently on the same post and the reason was that the petitioner was regularized prior to the regularization of the respondent no. 3, but while preparing the seniority list of Passenger Tax Superintendent/Trade Tax Superintendent/Tax Superintendent/Assistant Public Prosecutor and Head Assistant/Head Clerk, this fact was unnoticed and serial no. 68 was left reserved, while the name of Sri Dinesh Chandra Pande was shown at serial no. 69. It is settled law that if the appointment is made by promotion, then on the promoted post the seniority shall be the same as it was in the feeding cadre.

Applying the sad principle and considering the fact that the petitioner was appointed, regularized, promoted and confirmed on earlier dates than that of the respondent no. 3, therefore, the petitioner has a lawful right to regain his seniority list and impliedly for that reason, the serial no. 68 in the seniority list was left showing ‘reserved’. That shows that Serial Number 68 was reserved for the petitioner and none else. The name the respondent no. 3 finds place at serial no. 69, as per inter-se seniority list filed by the respondents (Annexure No.6 to the Counter Affidavit).

In the Counter Affidavit filed on behalf of the respondent no. 2, it has been stated that the case of the petitioner could not be considered for promotion for the reason that his name did not find place in the seniority list sent by the Commissioner of Transport, U.P. The Transport Commissioner of Uttaranchal vide his letter dated 10-4-2004 had asked the petitioner to get his seniority settled indicating therein his date of regularization and placement in

the seniority list. Thus it is evident that the petitioner has been made to suffer on account of the lapse on the part of the Transport Commissioner and for that reason the petitioner could not get his promotion.

Form the facts narrated above, it is evident that the petitioner is senior to respondent no. 3 and was entitled to be considered for promotion along with respondent no. 3-Dinesh Chandra Pande.

Accordingly, a writ of mandamus is issued to the respondents to consider the name of the petitioner for promotion to the post of Passenger Tax Officer within a period of one month and, if necessary, the junior-most person in the seniority list shall be reverted, as a consequence of the promotion of the petitioner, for which no opportunity shall be required to be given. The writ petition succeeds.

The writ petition is hereby allowed. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

RCP